



# Commonwealth of Massachusetts State Ethics Commission

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## CONFLICT OF INTEREST OPINION EC-COI-93-10\*

### FACTS:

You are a full-time employee of the Department of Environmental Management (DEM). The Janas Skating Rink (Rink) is owned by the Commonwealth and operated by DEM. DEM has contracted with a private vendor to manage the Rink's operation. You have been offered a part-time employment position with the Rink's management vendor as a Zamboni driver.

### QUESTION:

Can you be employed by a private vendor on a part-time basis at the Janas Rink?

### ANSWER:

No, unless your current DEM position is structured to qualify as a special state employee position and the Governor approves of your exemption pursuant to G.L. c. 268A, §7(e).

### DISCUSSION:

Section 7 prohibits a state employee from having a direct or indirect financial interest in a contract with a state agency, unless an exemption is available. Your contemplated part-time employment by the Rink management vendor would result in you having an indirect financial interest in the vendor's management contract with DEM.

A general exemption provided in §7(b) is available to a state employee who is not employed by the contracting agency or an agency which regulates the activities of the contracting agency and who does not participate in or have official responsibility for any of the activities of the contracting agency if the contract is made after public notice and who files a disclosure with the State Ethics Commission.<sup>1/</sup> See *EC-COI-90-3*. This exemption, however, is unavailable to you because you are currently employed by the contracting agency, the DEM. See *EC-COI-85-81* (full-time state employee who sought to be employed by agency vendor under state contract could not avail himself of §7(b) exemption where his full-time employment was with contracting agency).

If your DEM position is restructured to allow you to engage in personal or private employment during normal business hours, you will qualify for special state employee status.<sup>2/</sup> You must, however, file with the State Ethics Commission a written disclosure of your part-time classification or permission to be privately employed during normal working hours prior to engaging in any such private employment. As a special state employee, you could overcome the §7 prohibition by relying upon the exemption found in §7(e). That exemption, however, requires that you file a written disclosure with the State Ethics Commission of your financial interest in the vendor's management contract with DEM. In addition, in order to avail yourself of the §7(e) exemption, you would need to receive approval of the exemption from the Governor.<sup>3/</sup>

In conclusion, because you will not qualify for the §7(b) exemption as a full-time employee of DEM, you cannot be employed on a part-time basis by the Rink management vendor. Only as a special state employee, and with the approval of the Governor, could you engage in your contemplated part-time employment without violating §7.

**DATE AUTHORIZED:** March 30, 1993

\*Pursuant to G.L. c. 268B, §3(g), the requesting person has consented to the publication of this opinion with identifying information.

<sup>1/</sup>If the contract is for personal services, additional requirements must be met.

<sup>2/</sup>"Special state employee," a state employee:

(1) who is performing services or holding an office, position, employment or membership for which no compensation is provided, or

(2) who is not an elected official and

(a) occupies a position which, by its classification in the state agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, provided that disclosure of such classification or permission is filed in writing with the state ethics commission prior to the commencement of any personal or private employment, or

(b) in fact does not earn compensation as a state employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special state employee shall be in such a status on days for which he is not compensated as well as on days on which he earns compensation. G.L. c. 268A, §1(o).

<sup>3/</sup>We note that even if you were a special state employee, you could not avail yourself of another exemption, provided by §7(d), because that exemption requires that you, as a special state employee, not participate in or have official responsibility for any of the activities of the contracting agency. In your case, because you are employed by the DEM, you necessarily participate in the activities of the contracting agency.